]

JOHN MURPHY
WALTER C. HENDERSON

IBLA 81-865 Decided September 22, 1981

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. A MC 69474 through A MC 69476.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Recordation

> Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report provided by sec. 28-1 of Title 30, relating thereto, all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

2. Estoppel--Federal Employees and Officers: Authority to Bind Government

> Reliance on a Bureau of Land Management pamphlet containing erroneous information does not relieve a claimant of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

A detailed map prepared by the mining claimant's geologist, showing the geologist's labor performed on the claims during the assessment year in question, cannot be considered as meeting the requirements of sec. 314 of FLPMA with respect to notice of intention to hold a mining claim, where it was not filed for recordation with the local recording office where the notice of location is prescribed by state law to be recorded.

4. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notic Recordation

The language in sec. 314 of FLPMA, 43 U.S.C. § 1744(c) (1976), relating to defective and untimely filings does not protect a claimant from the statutory conclusive presumption of abandonment where he has not met the recordation requirements of FLPMA. It is only defectiveness or untimeliness of filings under other Federal laws that shall not impair the validity of a mining claim which is otherwise valid under FLPMA.

5. Administrative Procedure: Adjudication--Evidence: Generally --Evidence: Presumptions--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Although, at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), Congress specifically placed the burden on the

claimant to show that the claim has not been abandoned by his compliance with FLPMA's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

6. Administrative Procedure: Hearings--Constitutional Law: Due Process--Federal Land Policy and Managem

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

7. Administrative Authority: Generally--Constitutional Law: Generally--Statutes

The Department of the Interior, as an agency of the Executive Branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

APPEARANCES: Michael J. Brophy, Esq., Phoenix, Arizona, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This appeal presents for review a decision of the Arizona State Office of the Bureau of Land Management (BLM), declaring abandoned and void certain mining claims because the claimants had failed to file with BLM by October 22, 1979, either affidavits of assessment work performed or notices of intention to hold the claims. The appeal is limited to those claims designated A MC 69474 through A MC 69476. This decision, dated June 26, 1981, states:

> Additionally, since these were pre-FLPMA [Federal Land Policy and Management Act of 1976] claims, 1/ you were required to file prior to October 22, 1979, either evidence of annual assessment work for the 1978-1979 assessment year or a notice of intention to hold, 43 CFR 3833.2-1(a). Failure to meet this mandatory requirement causes the claims to be held to be conclusively abandoned and null and void, 43 CFR 3833.4. Michael Jon McFarland, 51 IBLA 173 (1980).

Our review of the facts, of the arguments presented by appellants, and of the law leads us to affirm.

The facts show that John Murphy and Walter C. Henderson (appellants) have been in continuous and active possession of their claims since the dates of location. Throughout each of the subsequent years more than $100 worth of labor or improvements have been made by appellants on their claims, in accordance with the requirement of 30 U.S.C. § 28 (1976). Indeed, appellants assert that they have expended in excess of $200,000 in developing these claims. However, appellants acknowledge that they cannot find in their own files nor in the records of the proper county recorder's office, any record of labor performed and improvements made for the assessment year 1978-79. On October 4, 1979, appellants filed with BLM copies of their claims' location notices that had been recorded with the county recorder of Gila County, Arizona. Maps of the claims were also filed with BLM at that time, including a special large map prepared by an engineer who had performed geophysical work on the claims during the 1978-79 assessment year, indicating the work he had performed. Apparently, these maps were not recorded with the county recorder. Appellants assert that they recorded the location notices and maps with BLM under the belief that they would thereby be complying with the requirements of FLPMA. They explain that their understanding of the FLPMA recordation requirements was based upon notices and explanatory materials, containing erroneous information, published and distributed by BLM. Appellants insist that their only intent was to comply fully with the recordation requirements as set forth and explained in the BLM explanatory material, and that they have never intended to abandon the claims.

Information similar to the BLM materials referred to by appellants, entitled "Questions and Answers, Recording of Mining Claims," has been the subject of our scrutiny before. See John Plutt, Jr., 53 IBLA 313 (1981). These materials, in the form of a pamphlet, consisted of a series of questions and answers which by the pamphlet's

---

1/ That is, appellants' claims were located prior to Oct. 21, 1976, the effective date of FLPMA. Pinto Creek No. 1, A MC 69474, and Pinto Creek No. 2, A MC 69476, were both located Feb. 6, 1966. Pinto Creek Placer #1, A MC 69475, was located Sept. 7, 1971.

own terms were "offered as a guide to those who are affected [by the FLPMA recordation requirements]." The pamphlet's answer to the question, "How often do mining claim owners file this assessment work or notice of intent," was: "All claimants must file either evidence of assessment work or a notice of intent [to hold the claim] by December 31 of the calendar year following the date of recordation with BLM." Appellants correctly point out that the BLM pamphlet "materially misstated the recording requirements under section 314(a) of FLPMA," in that it purported to allow a claimant to wait to file the proper document until the end of the calendar year following recordation. That is, in this case, since appellants did not file their notices of location with BLM until October 1979, they viewed a recordation of the other documents by December 30, 1980, as timely.

[1] In fact, however, as appellants concede is the case, for claims located on or before October 21, 1976, section 314 of FLPMA requires the filing with BLM of "a copy of the official notice of location or certificate of location," 2/ and "either a notice of intention to hold the mining claim * * *, an affidavit of assessment work performed thereon, [or] a detailed report provided by section 28-1 of Title 30, relating thereto," 3/ all to be filed on or before October 22, 1979.

---

2/ Section 314(b) of FLPMA, 43 U.S.C. § 1744(b), states in full:

"(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel sited located after October 21, 1976, shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground."

3/ Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1) and (2) reads:

"(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection.

"(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law

Each required document also must have been filed or recorded by October 22, 1979, with the proper local or state office having the responsibility under state law for recording location notices. 4/ Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Appellants assert that it is because of their reasonable reliance on the BLM information 5/ that they failed to meet the statutory requirements, and that they had every honest intention to comply, and that they had no intention to effect an abandonment of their claims. They vigorously contend that "BLM, in disseminating this information, had to have intended that this information be relied upon; [appellants] believed this information." Appellants then allege the presence in this case of each element necessary for estoppel of the Government, 6/ and assert that because of its "patently misleading information" BLM should be estopped from strictly enforcing section 314 of FLPMA.

[2] We sympathize with appellants to the extent they were misled by BLM's misstatement of what is required under section 314 of FLPMA. However, we cannot indulge appellants' claim of estoppel against the Government. One of the essential elements of an estoppel situation is that the party asserting estoppel must be ignorant of the material facts. In this case, the facts about which appellants claim they were misled were the applicable statutory and regulatory rules of recordation. But it is an established rule of law that "[a]ll persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edward W. Kramer, 51 IBLA 294 (1980)."

---

fn.3 (continued)
to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of Title 30, relating thereto.

"(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground." 4/ See 43 U.S.C. § 1744(a) and (b), and 43 CFR 3833.1-2(a) and (b). See also 43 CFR 3833.2-3(a).

5/ By an addendum to its printed pamphlet BLM attempted to "correct" the flawed answer discussed above. This addendum addressed only a matter not of relevance to this case, and left unchanged the incorrect statement affecting the appellants. The appellants note that this purported correction "makes it appear even more clearly that affidavits of annual labor or a notice of intention to hold should not be filed until December 31, 1980."

6/ Appellants have alleged the elements discussed in United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978).

John Plutt, Jr., supra at 316. Thus, this presumption precludes appellants' argument that estoppel lies, because they cannot claim ignorance of the true facts. A careful reading of the statute and the governing regulation, 43 CFR 3833.2-1(a), 7/ would have clearly indicated that evidence of assessment work or notice of intention to hold must have been filed by appellants with BLM on or before October 22, 1979. Moreover, as we recently stated:

> [R]eliance upon erroneous or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); * * * Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970).

Lynn Keith, 53 IBLA 192, 198, 88 I.D. 369, 373 (1981).

[3] Appellants next argue that their filing with BLM of the large map prepared by their geologist in connection with his labor performed during the 1978-79 assessment year should be regarded as a notice of intention to hold their mining claims pursuant to section 314(a)(1). They state: "By so regarding the map, the purposes of FLPMA are effectuated in that Claimants have demonstrated an intent to hold their claims, and the large map served as record notice to others and to the BLM of that intent and that the claims were 'active.'" Unfortunately, section 314 will not permit the result sought by appellants in this case. The recordation of this map, which arguably 8/ shows the appellants' subjective intent to continue to hold and work the claims, does not meet the requirement, noted above, 9/ that all instruments required to be filed with BLM under section 314 must also be timely filed with the local recorder's office where the notice of location is recorded. Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981). Appellants have not intimated that the map prepared by their geologist has ever been filed with the local recording office where the notice of location is recorded,

---

7/ This regulation states:

"(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever [sic] date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim."

8/ The record before us does not contain a copy of the map or specific data from the map, and we can, thus, only assume arguendo that the map would allow the stated inference to be drawn.

9/ See n.4 and accompanying text.

and thus their good-faith subjective intent to hold does not overcome their failure to comply with the recording statute. 10/

[4] In the alternative, appellants request us to regard this large map as a defective notice of intention to hold these claims. Appellants base this request on certain language in subsection (c) of section 314 that "it shall not be considered a failure to file if the instrument is defective * * *." The text of this subsection reads as follows:

(c) The failure to file such instruments as required by subsections (a) and (b) of this section shall be deem mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

43 U.S.C. § 1744(c) (1976). Appellants suggest that by use of this language Congress intended to release from the effects of the conclusive presumption of abandonment all mining claimants who in good faith tried to comply with the recording requirements of section 314(a) and (b). However, a more careful reading of subsection (c) shows that Congress wanted to make clear that any defect or untimeliness of a filing or recordation made under other Federal laws shall not affect a mining claim's validity if it is otherwise valid under FLPMA. However, where, as here, the particular requirements of FLPMA have not been met, the conclusive presumption of abandonment becomes effective.

[5] Appellants also argue that the use of the term "abandonment" in section 314(c) indicates a significantly different legal connotation from the term "forfeiture," which latter term, appellants note, is typically applied to the invalidation of mining claims for failing to properly record or otherwise perfect claims under Federal statutes. Appellants assert that Congress deliberately chose the term "abandonment" over the term "forfeiture," thus showing Congressional intent to void only stale mining claims as opposed to recently-worked claims like appellants'. They argue that they could not have abandoned their claims because they had no intent to do so and because they colorably complied with section 314. The essence of this argument was presented to this Board in Lynn Keith, supra, in which we said:

---

10/ We need not decide whether the map was adequate under 43 CFR 3833.2-3, relating to the proper form of a notice of intention to hold a mining claim.

> At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

Lynn Keith, supra, at 197, 88 I.D. at 372.

This result is ineluctable because the sole and fundamental purpose of section 314 is to provide for recordation of certain named instruments. Compliance with this statute requires, by its nature, that the instruments be properly and timely delivered to the prescribed offices, and if this is not accomplished, a claimant's good-faith subjective intent to comply is no cure.

[6] Appellants claim a due process right to an evidentiary hearing on the question of their actual intent regarding abandonment, so as to rebut the statute's conclusive presumption. They cite several Supreme Court decisions in support of their claim. However, appellants' allegations clearly show that their real problem cannot be solved by any factual hearing provided by the Department of the Interior. They concede that they have not complied with the statutory requirements in this case, and, thus, nothing which could be additionally alleged could, under these circumstance, absolve us of our duty to enforce the conclusiveness of the statutory presumption. A hearing would serve no useful purpose, other than to provide the appellants with an opportunity for possible catharsis. No evidentiary hearing is required where there is no issue of material fact and the validity of a claim hinges on the legal effect of facts of record. John J. Schnabel, 50 IBLA 201, 204 (1980). We therefore decline to grant the hearing.

[7] Appellants also decry the conclusive presumption of abandonment created by section 314 as a denial of due process of law under the Fifth Amendment of the United States Constitution. As to this we express no opinion, because we are powerless, as an agency of the Executive Branch of the Federal Government, to determine the validity of an act of Congress with respect to its constitutionality or otherwise. Lynn Keith, supra at 198, 88 I.D. at 372. Such is the domain of the judiciary; however, the courts have been validating FLPMA, including section 314(c) specifically, despite attacks against its constitutionality. For example, when presented with the argument that the conclusive presumption of abandonment acts as a forfeiture statute violative of due process, the Ninth Circuit, in Western Mining Council v. Watt, 643 F.2d 618, 629 (9th Cir. 1981), stated, "[W]e

reject plaintiffs' conclusion that the provisions of § 1744(c) are unreasonably harsh in requiring that mining claims be conclusively presumed to be abandoned upon failure to file." 11/ Thus, the statute's clear and fast provision for conclusive abandonment requires us, on these facts, to find that the decision below is correct. We regret the harshness of this unavoidable result, and we remind appellants that they may relocate their claims, subject to any valid intervening rights of third parties or of the United States and assuming the availability of the land to mining location, by filing the applicable instruments, based on the new location dates, as prescribed in the regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

---

11/ In this opinion the Ninth Circuit relied extensively on the reasoning and language of Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).